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CELA
FEDERAL ELECTION COMMISSION

October 7, 2014

Via: Email (fhampton@fec.gov)
Federal Election Commission
Office of Complaints Examination
and Legal Administration
Attn: Frankie Hampton, Paralegal
999 E Street, NW
Washington, DC 20463

Re: MUR 6868; Harris Media, LLC and Vincent Harris, Respondents

To Whom It May Concern:

This is a response from both Respondents to the above referenced MUR and to the Complaint filed by Committee to Elect Vance McAllister ("the Complaint"). It is my understanding that you have received a Statement of Designation of Counsel for Harris Media, LLC and Vincent Harris that authorizes me to respond on their behalf.

Respondent Vincent Harris denies any and all allegations that he violated any law or regulation under the jurisdiction of the Federal Election Commission ("FEC"). All actions taken relevant to the allegations in the Complaint were taken by Harris Media, LLC, a Texas limited liability company, and to the extent that Respondent Vincent Harris (or any of Harris Media, LLC's other employees, contractors, or agents) engaged in any activities alleged in the complaint, Mr. Harris did so in his capacity as a manager of Harris Media, LLC, and he should have no individual responsibility or liability for such actions. The following paragraphs contain Respondent Harris Media's response to MUR 6868, and Respondent Vincent Harris incorporates those paragraphs below into his response to the MUR as if he were responding personally.

Respondent Harris Media, LLC ("Harris Media") denies any and all allegations that it violated any law or regulation under the jurisdiction of the FEC as alleged in the Complaint. The Committee to Elect Vance McAllister ("McAllister") properly characterizes the dispute between the parties as one regarding fees owed from the Committee to Harris Media. McAllister has improperly sought the FEC's jurisdiction to resolve this contractual dispute.

Harris Media, under contract with McAllister, prepared under McAllister's direction and with

McAllister's consent and authorization leading up to the November 2013 special congressional election, a campaign website and social media content for You Tube and Twitter. As part of Harris Media's obligations, Harris Media obtained the domain and accounts for those services. Upon the conclusion of the general election, McAllister owed Harris Media a bonus, which McAllister has refused to pay. Harris was unwilling to transfer the account access to these services to McAllister until full payment was received.

The content on all of those services has remained static since the November 2013 special election, with no new content having been added or transmitted, and with all existing content having been prepared for, approved and authorized by McAllister. On September 8, 2014, Harris Media removed the website, www.mcallisterforcongress.com, and on October 7, 2014, Harris Media fully transferred the login information and passwords for the website and social media sites to McAllister. Harris Media did this in an attempt to resolve matters with McAllister, and not, as claimed by McAllister, "in full recognition" of any alleged trumped-up violation of federal statutes or regulations. Further, Harris Media denies that its decision to not capitulate to McAllister's demands constitutes a knowing violation of any statute or rule.

The apparent basis of the allegations are that Harris' determination to withhold transferring the user login and passwords to the website and social media services to McAllister somehow violated 52 U.S.C. 30124 (formerly 2 U.S.C. § 441h), and its corresponding regulation 11 C.F.R. § 110.16 McAllister fails to identify the subsection(s) that McAllister alleges Harris violated, but the only stretch of the law that could possibly apply here would be subsection (a)(1) or (2), as subsection (b) relates to the fraudulent solicitation of funds, which is not alleged in the Complaint.

The statute reads as follows:

> (a) In general
> No person who is a candidate for Federal office or an employee or agent of such a candidate shall—
> (1) fraudulently misrepresent himself or any committee or organization under his control as speaking or writing or otherwise acting for or on behalf of any other candidate or political party or employee or agent thereof on a matter which is damaging to such other candidate or political party or employee or agent thereof; or
> (2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).
>
> (b) Fraudulent solicitation of funds
> No person shall
> (1) fraudulently misrepresent the person as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations; or
> (2) willfully and knowingly participate in or conspire to participate in any plan, scheme, or design to violate paragraph (1).

52 U.S.C. 30124

The intention of the statute, passed in the immediate post-Watergate era, was to prevent opposing candidates or parties in a particular race from impersonating their opponents. As explained in the 1984 edition of the U.S. Justice Department's manual on *Federal Prosecution of Election Offenses*:

> 2 U.S.C. 441h [now 52 U.S.C. 30124] prohibits the fraudulent misrepresentation of authority to speak for a candidate running for federal office. This statute was first passed in 1976 to address the campaign "dirty tricks" in which Donald Segretti had engaged. ***It covers situations where a representative of one candidate is clandestinely infiltrated into the campaign of an opposing candidate for the purpose of embarrassment or campaign sabotage.***

Craig C. Dosanto, U.S. Department of Justice, "*Federal Prosecution of Election Offenses*" 4th Ed. (1984) at 23. Accessed on October 1, 2014 at https://www.ncjrs.gov/pdffiles1/Digitization/99354NCJRS.pdf. (Emphasis added).

As reported by *Time*, "Segretti and company stole Citizens for Muskie stationary and sent out a letter accusing Senator Henry "Scoop" Jackson of fathering an illegitimate child with a teenager and claiming that he had been arrested for homosexuality in the 1950s." Nate Rawlings, "Donald Segretti and the Nixon Gang," *Time*, 1/18/2012, accessed on October 1, 2014 at http://swampland.time.com/2012/01/19/top-10-dirty-political-tricks-2/slide/donald-segretti-and-the-nixon-gang/.

The 2007 Justice Department manual tweaked its earlier explanation for the statute, but it still explains that the purpose is to prevent one candidate from harming another candidate in the same race: "For example, Section 441h(a) [now 52 U.S.C. 30124] would prohibit an agent of federal candidate A from issuing a statement that was purportedly written by federal candidate B and which concerned a matter which was damaging to candidate B. Craig C. Dosanto and Nancy L. Simmons, U.S. Department of Justice, "*Federal Prosecution of Election Offenses*" 4th Ed. 7th Ed. (2007) at 81. Accessed on October 1, 2014 at http://www.justice.gov/criminal/pin/docs/electbook-0507.pdf

As explained above, there was no impersonation, no sabotage, no infiltration, and there are no messages that were created without McAllister's consent and authorization. No new content has been published since the November 2013 election. McAllister authorized all of the communications. Neither 52 U.S.C. 30124 nor its corresponding regulation 11 C.F.R. § 110.16 applies to the issues of this matter. Again, the matter is merely a contractual issue and one related to McAllister's failure to pay Harris Media for its work as agreed. Harris Media has, as also set forth above, provided McAllister with the user login and passwords for the website and social media accounts in an effort to resolve this matter.

The Complaint attempts to bootstrap its faulty premise that the statute applies to Harris Media by referencing other federal candidate or committee clients of Harris Media. None of these other clients are involved in Congressman McAllister's re-election campaign, and the intent of the statute was for it to apply to persons trying to cause harm to a candidate or committee in an election. Nothing of the sort exists here. Again, this is merely a contractual dispute between the parties, and no malice is involved.

Even if the statute and regulation applied to this case, the statute and regulation require that there be harm to the opposing candidate or committee. All of the content was approved and authorized by McAllister, and was created for McAllister. There could be no harm to McAllister for such content.

Further, contrary to the Complaint's allegations, voters cannot be "confused" by old messages created with McAllister's authorization for a previous election. First, nothing has been newly published or iterated from the website or social media sites since the 2013 election, and therefore, any subscribers to that content would not receive anything new in their RSS, Twitter or You Tube feeds to indicate that new content has been created, and voters who might happen to find the old content will easily see that it is old content. The content is dated – Twitter feeds and You Tube videos have dates, and the website had a 2013 copyright date. Voters can easily and readily determine the date of any such message and determine that the 2013 messages were indeed made in 2013, and not during the current election.

The old content is just that: old content and an old message previously delivered. It is a doppelganger of the 2013 campaign with no relation to the 2014 campaign, no harm has occurred, no confusion can occur (and confusion, in the unlikely event it exists, is not "harm" and is not intentional), the statute does not apply, neither Harris Media nor its clients are involved in any way in Congressman McAllister's re-election campaign, and regardless, the login information and passwords for the website and social media content have been provided to McAllister.

For the reasons set forth above, Vincent Harris and Harris Media, LLC respectfully request that the Federal Election Commission dismiss the Complaint.

Very truly yours,

POTTS & REILLY, L.L.P.

By: 

FMR/dr

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, personally appeared Kate Meriwether Zaykowski, a person known to me, who upon her oath, stated as follows:

"My name is Kate Meriwether Zaykowski I am fully competent to make this affidavit. I am Director of Accounts, Harris Media, LLC, a Texas limited liability company. I have, on behalf of Harris Media, LLC, been involved in the matter and aver that the statements made in the foregoing response to Vance McAllister for Congress Committee's complaint in Federal Election Commission matter MUR 6868 are within my personal knowledge and are true and correct. Further affiant sayeth naught."

Kate Meriwether Zaykowski, Director of Accounts, Harris Media, LLC, a Texas limited liability company

SUBSCRIBED AND SWORN by Kate Meriwether Zaykowski on this 7 day of October, 2014, to witness which my hand and official seal of office.

Notary Public in and for the State of Texas

NINA REBOLLAR
My Commission Expires
October 10, 2016